



Spring 3-1-2006

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Recommended Citation

GORDON V. N.C. DEP'T OF CORR., 12 Wash. & Lee J. Civ. Rts. & Soc. Just. 347 (2006).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol12/iss2/13>

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**GORDON V. N.C. DEP'T OF CORR.,
618 S.E.2d 280 (N.C. Ct. App. 2005)**

FACTS

The North Carolina Department of Correction (DOC) announced a job opening for the position of Superintendent IV at the Pamlico Correctional Institution on July 17, 2001.¹ Joseph Lofton, Eastern Region Director of the DOC, was the hiring manager and reviewed seven individuals for the position, including Robert Hines and Petitioner Gwendolyn L. Gordon.² Gordon, a white female, had over twenty years experience within the DOC. Her work was primarily in programming areas, but her experience also encompassed inmate relations and accommodations, as well as other areas of expertise.³ She also had a four-year business administration degree, was certified as a Basic Correctional Officer, and had five years and eight months experience as an Assistant Superintendent.⁴ Hines, an African-American male, also had served over twenty years with the DOC, but his experience focused on operations and inmate custody.⁵ He held a two-year associate degree with additional credit hours in business administration and served as an assistant superintendent for nine years and nine months.⁶ After reviewing and interviewing the job applicants, Lofton and the hiring committee recommended Hines for the position, and DOC Secretary Theodis Beck subsequently promoted Hines on September 13, 2001.⁷

Gordon filed a petition with the Office of Administrative Hearings (OAH) on January 18, 2002 contesting the decision to promote Hines and claiming that she was not promoted because of race and gender discrimination.⁸ After an administrative hearing, the Administrative Law Judge (ALJ) found that the DOC did discriminate against Gordon based on both her race and gender and ordered that, until she received a promotion similar to Hines's, Gordon receive back pay and benefits from the date of Hines's promotion.⁹

The State Personnel Commission (Commission) received the ALJ's decision and the corresponding record on February 11, 2003 and subsequently reversed it.¹⁰ Gordon sought review of the Commission's

¹ Gordon v. N.C. Dep't of Corr., 618 S.E.2d 280, 283 (N.C. Ct. App. 2005).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 284.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

reversal and also requested sanctions against the DOC in the Pitt County Superior Court.¹¹ Five days later, the Commission withdrew its decision, stating that it did not have the complete record from the ALJ hearing.¹² The Commission later reversed the ALJ's decision for a second time.¹³ Gordon again petitioned the Superior Court for judicial review and filed for sanctions against the DOC.¹⁴ She also requested that the Superior Court adopt the ALJ's order since the Commission's second order on the basis that it was issued outside of its allotted decision-making period.¹⁵

After a hearing on Gordon's motions, the Pitt County Superior Court issued an order reversing the Commission's second decision because it was both untimely and in error.¹⁶ In addition, the trial court fully adopted the ALJ's decision and order, awarding Gordon damages.¹⁷ The DOC then filed this appeal.¹⁸

HOLDING

Writing for the North Carolina Court of Appeals, Judge Tyson fully affirmed the decision of the Pitt County Superior Court,¹⁹ and Judges McCullough and Bryant concurred without filing separate opinions.²⁰ The court found that because the Commission had neither authority nor good cause to issue a late decision, the trial court did not err in reversing the Commission's decision as untimely.²¹ In addition, the court ruled that trial court did not err in adopting the ALJ's finding that the DOC discriminated against Gordon based on both her race and gender.²²

ANALYSIS

After *de novo* review, the North Carolina Court of Appeals considered and rejected the DOC's claim that the trial court erred in finding the Commission's order void due to untimeliness.²³ North Carolina law mandates that unless an agency makes a final decision within sixty days of

¹¹ *Id.*
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.* at 283.
²⁰ *Id.* at 294.
²¹ *Id.* at 287.
²² *Id.* at 292.
²³ *Id.* at 286.

receiving the official record, the ALJ's decision becomes the final decision of the agency.²⁴ The statute enables the agency to extend this time period by sixty days if the agency and the other parties agree to an extension or if the agency shows good cause.²⁵ The court of appeals ruled that the trial court was correct in its finding that the Commission had, in effect, adopted the ALJ's findings and decision because it had not made a showing of good cause nor had it reached an agreement to extend its time for consideration.²⁶

The Commission received the official record from the ALJ hearing.²⁷ The record contained a certification stating that the information included comprised the official record of the hearing; however, the certification also indicated that Lofton's deposition was on video tape but was not included although it was available for review in the OAH Clerk's office.²⁸ The Chief Clerk of the OAH issued a sworn affidavit stating that no one from the Commission contacted the clerk's office to view the tape.²⁹ The Commission reversed the ALJ's ruling.³⁰ After Gordon petitioned for judicial review, the Commission withdrew this decision, claiming that they had an incomplete record; they later received the "complete" record and issued a second decision, again reversing the ALJ, 112 days after its receipt of the record.³¹ The Commission claimed that its final decision was untimely because the OAH initially sent an incomplete record, qualifying as good cause for an extension under the North Carolina statute.³²

The court of appeals rejected this claim, citing precedent that the North Carolina "statute is clear that if a final decision has not been made within [the sixty-day time limit] the agency is considered to have adopted the ALJ's recommended decision. [There is] no ambiguity in this statutory language."³³ Because the record did not indicate that the parties had agreed to a time extension, the only way in which the second decision could be valid

²⁴ See N.C. GEN. STAT. § 150B-44 (2003) (finding "An agency... has 60 days from the day it receives the official record in a contested case... or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case... If an agency has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision.").

²⁵ *Gordon*, 618 S.E.2d at 286 (citing N.C. GEN. STAT. § 150B-44 (2003)).

²⁶ *Id.* at 286-87 (citing N.C. GEN. STAT. § 150B-44 (2003); *Holland Group v. N.C. Dep't of Admin.*, 504 S.E.2d 300, 305 (N.C. Ct. App. 1998); *Occaneechi Band of the Saponi Nation v. N.C. Comm'n of Indian Affairs*, 551 S.E.2d 535, 538 (N.C. Ct. App. 2001)).

²⁷ *Id.* at 285-86.

²⁸ *Id.* at 286.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 285 (citing *Occaneechi Band of the Saponi Nation*, 551 S.E.2d at 538).

despite its untimeliness was via a showing of good cause.³⁴ The court found that the Commission in this case was attempting to "disavow" its prior statement that it had received the whole record when it issued its initial decision and that this disavowing was improper, as previously established in *Holland Group v. North Carolina Department of Administration*.³⁵ Because the first decision clearly states that the Commission received the official record and because the Commission was on notice that the videotapes were available for review, the court declared that no good cause had been established to extend the Commission's time for issuing its decision.³⁶ In addition, the court noted that the Commission's first decision issued without review of the videotapes, and the second decision based on review of the entire record including the videotapes, were "virtually identical."³⁷ Therefore, the appeals court ruled that the trial court was correct in adopting the ALJ's finding of fact, conclusions of law, and final decision.³⁸

The court of appeals next addressed and then rejected the DOC's claim that, in adopting the ALJ's findings of fact and conclusions of law, the trial court erred in its finding that the DOC had engaged in racial and gender discrimination against Gordon.³⁹ The court first addressed the law-based findings that the trial court adopted from the ALJ's decision.⁴⁰ The DOC alleged that the trial court incorrectly concluded as a matter of law that Gordon had established a *prima facie* case of race and gender discrimination.⁴¹ The court addressed this claim utilizing the *de novo* standard of review.⁴²

³⁴ *Id.* at 286.

³⁵ *Id.*; see *Holland*, 504 S.E.2d at 304 (finding that the trial court correctly adopted the ALJ's decision because the Department of Administration (DA) had issued its decision beyond the statutory time limit). In *Holland*, the North Carolina Court of Appeals reviewed a trial court decision adopting the decision of an Administrative Law Judge because the DA's decision was untimely. *Id.* at 302. There, the DA, in reviewing the ALJ decision, entered a notice that it had received the Official Record. *Id.* The DA later attempted to extend its time in reviewing the record because certain tape recordings were not included in the official record and finally issued its final decision over nine months after its initial designation of its receipt of the official record. *Id.* at 302-03. The Court of Appeals affirmed the trial court decision finding that the DA's decision was untimely. *Id.* The court reasoned that the time period was designed to protect against unreasonable delay and that the DA gave its official assurance to the parties in the case that it had received the official record. *Id.* at 304. Since only the DA could determine whether they had received the official record and since it announced that it had, based on principles of equity and on the controlling statute, the DA could not disavow its previous statement. *Id.* at 305. Therefore, because an agency cannot "unilaterally extend the deadline for issuing its final decision," the DA's decision was untimely, and the trial court's decision to adopt the ALJ ruling was correct. *Id.*

³⁶ *Id.* at 286-87.

³⁷ *Id.* at 287.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* (citing *Harris v. Ray Johnson Constr. Co.*, 534 S.E.2d 653, 654 (N.C. Ct. App. 2000); *Mann Media, Inc. v. Randolph City Planning Bd.*, 565 S.E.2d 9, 17 (N.C. 2002)).

The North Carolina Supreme Court has noted that, in adopting the United States Supreme Court's standard for proving a discrimination claim,⁴³ "a *prima facie* case of discrimination 'may be established in various ways'" in satisfying the first prong of the Supreme Court's test.⁴⁴ The court noted that the DOC ignored the North Carolina Supreme Court's open-ended allowance for the establishment of a *prima facie* case of discrimination and instead claimed that since Gordon had not fulfilled a four-part test enumerated by the state Supreme Court,⁴⁵ the trial court erred in finding as a matter of law that Gordon had established a *prima facie* case.⁴⁶ In reviewing the facts, the court of appeals found that Gordon established those four elements in her gender discrimination claim but that she did not meet the four part test in her race discrimination claim.⁴⁷ However, she was also able to establish a *prima facie* case in her race discrimination claim using the open-ended standard because the evidence demonstrated the following: Gordon was better qualified than Hines; her experience was tailored to the DOC's previous hires for the position; errors detrimental to her were committed in the hiring process; Lofton's own evaluations objectively indicated that she was the better applicant; and an email from DOC Secretary Beck to Lofton tended to show that an African-American male was going to be hired regardless of applicant qualifications.⁴⁸ Because Gordon's proffered evidence demonstrates a *prima facie* case of discrimination based on both the four-part test and the more open-ended general standard and because substantial evidence supports the claim of a *prima facie* case, the North Carolina Court of Appeals dismissed the DOC's claim of error in the trial court's legal conclusions regarding the *prima facie* case of gender and racial discrimination.⁴⁹

After finding that the trial court correctly adopted the ALJ's law-based findings regarding Gordon's discrimination claims, the court of

⁴³ *Id.* at 287-88 (citing *Dep't of Correction v. Gibson*, 301 S.E.2d 79, 82 (N.C. 1983) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) "(1) The claimant carries the initial burden of establishing a *prima facie* case of discrimination; (2) The burden shifts to the employer to articulate some legitimate nondiscriminatory reason for the applicant's rejection; and (3) If a legitimate nondiscriminatory reason for rejection has been articulated, the claimant has the opportunity to show that the stated reason for rejection was, in fact, a pretext for discrimination.").

⁴⁴ *Id.* at 288 (citing *Gibson*, 301 S.E.2d at 82-83).

⁴⁵ *Id.* at 288-89 (citing *Gibson*, 301 S.E.2d at 83) ("For example, a *prima facie* case of discrimination may be made out by showing that (1) a claimant is a member of a minority group, (2) he was qualified for the position, (3) he was discharged, and (4) the employer replaced him with a person who was not a member of a minority group").

⁴⁶ *Id.*

⁴⁷ *Id.* at 288 "(1) as a female, she is a member of a protected group; (2) she was qualified for a promotion; (3) she was passed over for the promotion; and (4) the person receiving the promotion was not a member of the protected class". *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 289.

appeals addressed the fact-based findings supporting Gordon's claim and the ALJ and trial court's decision.⁵⁰ The DOC claimed that the trial court's decision was in error because it was based in part on incorrect findings of fact regarding the content of Secretary Beck's email, Lofton and Hines's conflicting testimony, and DOC witness testimony analyzing Gordon's prior experience.⁵¹ In reviewing this claim, the appeals court noted that it must adhere to the substantial evidence standard,⁵² allowing it to determine if there is "relevant evidentiary evidence a reasonable mind might accept as adequate to support a conclusion."⁵³ The court of appeals reviewed the ALJ's findings of fact adopted by the trial court and found that they were all supported by substantial evidence.⁵⁴

Regarding the email that Secretary Beck sent to Lofton, the ALJ found that the content of the email indicated that the DOC was going to hire an African-American male rather than hiring a white female regardless of the qualifications of the applicants, supporting Gordon's allegations of discrimination.⁵⁵ Because the ALJ based this finding partially on his disbelief of Beck's in-court explanation of the content of the email in a non-discriminatory context, the appeals court followed precedent and did not substitute its judgment for the judgment of the ALJ because, as the trier of fact, the ALJ was present for the parties' testimony and was able to observe the parties' demeanors and other indicators of truthfulness.⁵⁶

The court of appeals also noted that the ALJ's finding of fact regarding Lofton and Hines's conflicting testimony was supported in the record by substantial evidence.⁵⁷ Lofton testified that he had no personal interactions with Hines and only one professional interaction with him in a supervisory capacity.⁵⁸ In contrast, Hines testified that he once worked at a small correctional facility with Lofton, that there they sometimes worked the same two- to three-officer shifts, that they lived in the same town, that they were members of some of the same professional organizations, and that they both attended social functions held by these organizations.⁵⁹ The court of appeals noted that this evidence of discrepancy in the testimony was enough to satisfy the substantial evidence standard.⁶⁰

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* (citing N.C. Dep't of Env't & Natural Res. v. Carroll, 599 S.E.2d 888, 894 (N.C. 2004)).

⁵³ N.C. GEN. STAT. § 150B-2(8b) (2003).

⁵⁴ *Gordon*, 618 S.E.2d at 290-91.

⁵⁵ *Id.* at 290.

⁵⁶ *Id.* at 291 (citing *Carroll*, 599 S.E.2d at 896 and *Watkins v. N.C. State Bd. of Dental Exam'rs*, 593 S.E.2d 764, 769 (N.C. 2004)).

⁵⁷ *Id.* at 290.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

Finally, the court found that the administrative hearing record supported the finding of fact that witnesses for the DOC were critical of Gordon's work history, thus satisfying the substantial evidence standard.⁶¹ The court noted that the witnesses' undervaluation of Gordon's prior experience and their notation of her failure to take certain assignments or diversify her geographic location indicated that they were critical of her work experience and qualified as substantial evidence supporting the ALJ's finding of fact.⁶²

The court's final inquiry regarding Gordon's claim of race and gender discrimination involves the DOC's allegation that the ALJ and trial court erred in their finding of fact and conclusion of law determining that Gordon was more qualified than Hines for the position in contest.⁶³ The DOC alleged that the ALJ and the trial court had impermissibly substituted their own judgment for that of the employer as to which candidate best satisfied the needs of the position.⁶⁴ However, the court of appeals noted that the fact-finder need only discern the employer's motivations in making the contested decision and that to conclude that discrimination is present, the fact-finder must only give credit to the plaintiff's explanation of the decision and disbelieve the employer's alleged non-discriminatory reasoning.⁶⁵ The court then addressed the ALJ's finding of fact concluding that Gordon was more qualified than Hines.⁶⁶ In reviewing the record and the evidence presented at the hearing, the court found that substantial evidence supported the finding of fact and that Gordon had met the burden of showing intentional discrimination, noting that Gordon had more education, a more senior status, higher interviewing and testing scores, and better reviews by the DOC itself.⁶⁷ Therefore, the court of appeals denied the DOC's claim of error in the ALJ and trial court's finding of facts regarding Gordon's qualifications.⁶⁸

The court also addressed the DOC's claim that the ALJ and trial court's conclusions of law regarding Gordon's qualifications were in error.⁶⁹ After reviewing the specific qualifications that the DOC requested from candidates for the position,⁷⁰ analyzing Gordon and Hines's backgrounds,

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 291.

⁶⁴ *Id.* (citing *Gibson*, 301 S.E.2d at 84).

⁶⁵ *Id.* (citing *Enoch v. Alamance County*, 595 S.E.2d 744, 752 (N.C. Ct. App. 2004); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993)).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 291-92.

⁷⁰ *Id.* at 292 (citing *Dorsey v. UNC-Wilmington*, 468 S.E.2d 557, 560 (N.C. Ct. App. 1996)).

reviewing the ALJ and trial court's findings, and consulting relevant precedent, the appeals court found that the conclusion of law that Gordon was better qualified was supported by substantial evidence and that this finding was objectively legitimate.⁷¹ Since substantial evidence supports the finding of fact and the legal conclusion that Gordon was better qualified, the court of appeals found that the ALJ and trial court's recognition of Gordon's claim of race and gender discrimination was valid.⁷²

The North Carolina Court of Appeals determined that each of the DOC's claims of error was without merit, finding that the Commission's delay in entering its decision effectively adopted the ALJ's decision and that the ALJ's findings of fact and legal conclusions were valid and supported Gordon's claims of both racial and gender discrimination.⁷³ Therefore, the court of appeals affirmed the trial court's adoption of the ALJ's decision and order in its entirety.⁷⁴

CONCLUSION

While *Gordon* does not have far-reaching implications for employment discrimination law, it implicates an important principle significant to plaintiffs alleging discrimination by their employers and illustrates the complicated nature of North Carolina's discrimination law scheme. First, the appeals court's analysis illustrates the wide deference afforded to the decisions of administrative law judges. When analyzed under the substantial evidence standard as in this case, affirmation of the administrative decision is likely; therefore, *Gordon* demonstrates the importance of the employment discrimination claim at the administrative level. In addition to the deference shown to the rulings of the administrative court, the court's analysis in *Gordon* implicates the complications arising from North Carolina's open-ended allowance for a showing of a *prima facie* case of discrimination to plaintiffs. Although North Carolina courts do not mandate a strict set of elements to be fulfilled in order to establish a *prima facie* case and therefore enable a broader range of plaintiffs to file meritorious claims that would otherwise fail to meet the elements of a specific test, plaintiffs' burdens of production at different stages of the claim are muddled absent the structure traditionally present in discrimination law schemes. Facts typically used to demonstrate that an employer's non-discriminatory reasons for the hiring decision was a pretext for

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 287-92.

⁷⁴ *Id.*

discrimination are utilized to establish a *prima facie* case and for their conventional use, thereby complicating the court's analysis.

Gordon illustrates the deference shown to decisions made by administrative law judges in the fact-finding stage of administrative law hearings. In this case, while North Carolina law requires *de novo* review of challenges to the ALJ opinion regarding questions of law, all of the issues of fact supporting these questions of law are evaluated by both the trial court and appeals court using the "substantial evidence" standard of review. The North Carolina Court of Appeals articulates this standard as requiring findings of fact to be based upon "relevant evidence a reasonable mind might accept as adequate to support a conclusion."⁷⁵ This is a very low standard of review, virtually enabling ALJ findings of fact to stand unchallenged absent a completely erroneous ruling. Here, this deferential standard permitted the verdict for Gordon at the administrative level to stand despite a strong challenge from the Department of Corrections. The substantial evidence standard used to review administrative findings of fact in North Carolina highlights the importance of the administrative hearing.

North Carolina's open-ended method of establishing a *prima facie* case of discrimination enables plaintiffs to file meritorious claims of discrimination that do not meet the strict elements of a traditional *prima facie* case. However, the absence of structure in forming a *prima facie* case enables plaintiffs and courts to use the same reasoning at multiple stages of the discrimination inquiry, muddling the court's analysis of discrimination claims. In *Gordon*, the DOC attempts to dispose of Gordon's claims by stating that since she does not meet the four-part standard for a *prima facie* case of discrimination articulated by the North Carolina Supreme Court in *North Carolina Department of Correction v. Gibson*.⁷⁶ However, in *Gibson*, the North Carolina Supreme Court explicitly states that "[t]he burden of establishing a *prima facie* case of discrimination is not onerous" and that "it may be established in various ways," including the four-part test mentioned by the court.⁷⁷ That standard for establishing a *prima facie* case requires a

⁷⁵ N.C. GEN STAT. § 150B-2(8b) (2003).

⁷⁶ See *Gibson*, 301 S.E.2d 82-83 (listing a four-part showing for a *prima facie* case of discrimination). In *Gibson*, plaintiff, an African-American correctional officer, was fired after an incident in which he incorrectly carried out his duties. *Id.* at 85. However, several other white employees were also involved in the incident and were not fired. *Id.* The North Carolina Supreme Court articulated North Carolina law regarding the standards for establishing a *prima facie* case of discrimination and found that Gibson had established such a case in his claim regarding his termination. *Id.* at 82-83, 85. That court also found that although the State Personnel Commission articulated a legitimate nondiscriminatory reason for Gibson's termination, it articulated an improper burden of proof in showing this nondiscriminatory reason. *Id.* at 88. Therefore, the Supreme Court reversed the appeals and trial court decisions and remanded to the State Personnel Commission to re-hear the case using the correct burden of proof. *Id.*

⁷⁷ *Id.* at 82 (citing *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981)).

showing that: "(1) a claimant is a member of a minority group, (2) he was qualified for the position, (3) he was discharged, and (4) the employer replaced him with a person who was not a member of a minority group."⁷⁸ The test articulated by the North Carolina Supreme Court in *Gibson* would preclude Gordon's claim of racial discrimination. However, because North Carolina law allows for plaintiffs to establish *prima facie* cases without complying with constricting standards and elements, employees like Gordon are able to hold employers accountable for discriminatory decisions that are novel claims and that do not explicitly violate established case law.

Although this open-ended method of establishing a *prima facie* case does allow for plaintiffs to bring claims arising outside the traditional context of employment discrimination, North Carolina's employment discrimination law structure intensifies the confusion in an already-complicated area of law. Because plaintiffs are able to use any reason or evidence to construct a *prima facie* case of employment discrimination, evidence used at one stage of the inquiry is likely to be used at other stages of the analysis, thereby causing difficulties and overlap in the court's analysis. North Carolina has adopted the three-step federal standard for proving an employment discrimination claim: (1) the plaintiff must establish a *prima facie* case of discrimination, (2) the burden shifts to the employer to articulate a non-discriminatory reason for the alleged discriminatory activity, and (3) the plaintiff must show that the employer's articulated non-discriminatory reason was a pretext for discrimination.⁷⁹

In a structured scheme, in the first step, courts have articulated specific methods through which plaintiffs can prove a *prima facie* case. Then in the third step, the plaintiff has free range and discretion to present evidence demonstrating why the employer has in fact discriminated despite allegations otherwise. In the North Carolina scheme, as illustrated in *Gordon*, a wide range of evidence can now be presented to prove the *prima facie* case in step one, evidence that would conventionally be used in the third step. Instead of presenting straight-forward facts in establishing the *prima facie* case, such as the plaintiff's membership in a protected class and the plaintiff's termination and replacement with a non-minority employee, North Carolina law allows the presentation of a broad range of evidence at step one, evidence that can and will likely be used again to rebut the employer's non-discriminatory reasoning in step three. Although this does not in any way reflect on the merit or validity of any plaintiff's claim, it does

⁷⁸ *Id.* at 82–83 (citing *Coleman v. Braniff Airways, Inc.*, 664 F.2d 1282 (5th Cir. 1982) and *Marks v. Prattco, Inc.*, 607 F.2d 1153 (5th Cir. 1979)).

⁷⁹ *Id.* at 82 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

complicate the jobs of judges and makes analysis of North Carolina employment law more confusing.

Gordon demonstrates the broad range of fact patterns that may initially establish a case of employment discrimination under North Carolina law and the deference that reviewing courts show to findings of fact at the administrative level. These two factors both implicate the large number of claims that may be brought regarding employment discrimination and also stress the importance of the administrative hearing. While the open-ended nature of establishing an employment discrimination claim under North Carolina law is beneficial to plaintiffs like Gwendolyn Gordon, it does present more complications and overlap in the analysis of discrimination claims.

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